IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2418 OF 2003.
IN
SUIT NO. 54 OF 1997

Babubhai Jeshanker Trivedi.] .. Plaintiff
Versus
Smt. Sushma Virendra Pal Verma.] .. Defendant
And
Shri Jasvinder Singh Lamba.] .. Applicant

Ms.Rubia Taneja i/b M/s.Jhangiani Narula & Associates for applicant.

Mr.Girish Manjeshwal i/b R.D. Suvarna for plaintiff.

Mr.Jariwala i/b Thakore Jariwala & Associates for defendant No.1.

CORAM: ANOOP V. MOHTA, J.

DATED: 14TH SEPTEMBER, 2005

P.C. :

1. This Notice of Motion has been taken out by the applicant in a suit filed by plaintiff for declaration and injunction in respect of properties as referred in the order dated 18th October, 2002 (Exhibit-A), passed in Notice of Motion No.161 of 1997 and others in the above suit No.54 of 1997.

2. Applicant herein has averred that so far as his flat No.204 on the second floor in Building No.3 is

concerned, as observed in paragraph 3, the same is not in dispute between the parties. Therefore, the appointment of Receiver in pursuance to the orders, would affect their rights. The present Notice of Motion, therefore, is taken out for the discharge of the Receiver and for direction to restore the possession to the applicant, without passing of Accounts.

3. Learned counsel appearing for plaintiff in Suit No.54 of 1997 fairly submitted that they have no objection if the prayer clause (a) is granted in the present Motion. However, that would be without prejudice to their rights in the main suit. In similarly situated cases in respect of other flats by order dated 28th January, 2004, in other Notices of Motion, this Court has already passed such orders.

4. Taking this into account, apart from the averments made in the Affidavit in support of the Notice of Motion, I am inclined to grant prayer clause (a) of the Notice of Motion. Notice of Motion is, therefore, made absolute in terms of prayer clause (a) without prejudice to the rights of the plaintiff in the suit. Notice of Motion is accordingly disposed of.

[ANOOP V. MOHTA, J.]

[srpasha@hc]